May 2003

Update: Juvenile Justice Benchbook (Revised Edition)

CHAPTER 17

Designated Case Proceedings—Arraignments, Designation Hearings, and Preliminary Examinations

17.1 Definition of Designated Case Proceeding

A. Prosecutor-Designated Cases

Add the following language after the second paragraph on p 395:

MCL 712A.2d does not violate due process. In *People v Abraham*, ___ Mich App ___, ___ (2003), the Court of Appeals held that MCL 712A.2d does not violate due process. In *Abraham*, an 11-year-old juvenile, who was tried as an adult in the Family Division of the Circuit Court, appealed his conviction and juvenile disposition for second-degree murder. The juvenile was committed to FIA until age 21.

The juvenile first argued that MCL 712A.2d violates due process protections because it permits a prosecuting attorney to criminally charge a juvenile without a prior hearing. *Abraham, supra* at ___. The Court of Appeals disagreed with the juvenile's contention. The Court emphasized that juveniles accused of criminal offenses are not constitutionally entitled to more procedural protections than adults receive in criminal courts. *Abraham, supra* at ___, citing *People v Conat*, 238 Mich App 134, 158 (2000). The Court concluded that the juvenile received all due process protections to which an adult criminal defendant is entitled:

> "Defendant was tried in an ordinary criminal trial in a family court and received all due process protections to which any defendant is entitled: notice of the charges against him by way of an indictment; a preliminary examination hearing determining

> whether the evidence was sufficient for bindover; initial counsel provided by the state . . . ; and a fair, albeit imperfect trial. . . ." *Abraham, supra* at ___.

The defendant next argued that MCL 712A.2d is unconstitutional because it fails to specify a minimum age under which a juvenile may *not* be charged and tried as an adult. The Court of Appeals held:

> "In addition to the reasons stated above for sustaining the statute at issue, we reiterate that the wisdom or humanity of MCL 712A.2d is not within the authority of this Court to determine where children have no constitutional right to juvenile prosecution in this state. See [*People v Conat,* 238 Mich App 134 (2000); *People v Kirby*, 440 Mich 485 (1992)]. It is properly within the prosecutor's discretion to determine whether the state can prove the criminal intent of a child at any particular age." *Abraham, supra* at ___.

The Court of Appeals also dismissed defendant's argument that MCL 712A.2d provided the prosecutor with unfettered charging discretion. The Court indicated that defendant's argument ignored the interaction between the three branches of government in determining what punishment is given to a criminal offender: the Legislature defines the sentences, the court imposes individual sentences and the prosecutor brings charges against defendants that affect which sentences are available for the court to impose. *Abraham, supra* at ___.

CHAPTER 25

Recordkeeping & Reporting Requirements

25.18 Recordkeeping Requirements of the Sex Offenders Registration Act

L. Pertinent Case Law Challenging Registration Act

Add the following language at the end of the first paragraph of Section 25.18(L) on p 539:

> **Retroactive application permissible**. In a case of first impression, the United States Supreme Court held that the registration and notification requirements in a state's "Megan's Law" do not constitute punishment and thus may be applied retroactively under the Ex Post Facto Clause.
>
> In *Smith v Doe*, ___ US ___ (2003), two convicted sex offenders brought suit seeking to declare Alaska's Sex Offender Registration Act void under the Ex Post Facto Clause. The respondent sex offenders, whose convictions were entered before the passage of the Act, claimed that the Act's registration and notification requirements, which applied to them under the terms of the Act, constituted retroactive punishment in violation of the *Ex Post Facto Clause*. In reversing the Court of Appeals, the Supreme Court found that the Act is nonpunitive, thus making retroactive application permissible and not violative of the Ex Post Facto Clause. In coming to this conclusion, the Supreme Court found that the intent of the Alaska Legislature in promulgating the Act "was to create a civil, nonpunitive regime," whose primary purpose was to "protect[] the public from sex offenders." *Id*. at ___, ___.
>
> In addition to finding that the Alaskan Legislature's intent in promulgating the Act was nonpunitive, the Court also found that the purpose and effect of the Act's statutory scheme is not so punitive as to negate the state's intention to deem it civil. In so holding, the Court determined that the Act (1) has not been regarded in history and tradition as punishment; (2) does not impose an affirmative disability or restraint; (3) does not promote the traditional aims of punishment; (4) has a rational connection to a nonpunitive purpose; and (5) is not excessive with respect to that purpose.

Add the following language to p 539 before the last paragraph, which begins "**Due process under Michigan Constitution"**:

Due process under U.S. Constitution. The United States Supreme Court has held that due process does not require a state to provide a hearing to determine "current dangerousness" before it publicly discloses a convicted sex offender's name, address, photograph, and description on its sex offender registry.

In *Connecticut Department of Public Safety v Doe*, ___ US ___ (2003), the respondent, a convicted sex offender, brought suit against the Connecticut Department of Public Safety on behalf of himself and other sex offender registrants, claiming that the public disclosure of names, addresses, photographs, and descriptions on Connecticut's sex offender registry violates procedural due process under the Fourteenth Amendment. Respondent specifically argued that he and the other registrants were deprived of a liberty interest—reputation combined with status alteration under state law—without first being afforded a predeprivation hearing to determine "current dangerousness." In reversing the judgments of the Court of Appeals and district court, which held that due process requires such a hearing, the Supreme Court began its analysis by first noting that under *Paul v Davis*, 424 US 693 (1976), "mere injury to reputation, even if defamatory, does not constitute the deprivation of a liberty interest." *Connecticut Department of Public Safety v Doe, supra at* ___. But the Court found it unneccessary to even address this specific question, because "due process does not entitle [respondent] to a hearing to establish a fact that is not material under the Connecticut statute." *Id*. at ___. The Supreme Court stated that the fact at issue here, i.e., "current dangerousness," is of no consequence under Connecticut's sex offender registry because Connecticut requires registration "solely by virtue of [the individual's] conviction record and state law." Moreover, the Connecticut registry even provides a disclaimer on its website that a registrant's alleged nondangerousness does not matter. Thus, the Supreme Court concluded as follows:

> "In short, even if respondent could prove that he is not likely to be currently dangerous, Connecticut has decided that the registry information of *all* sex offenders—currently dangerous or not—must be publicly disclosed. Unless respondent can show that that *substantive* rule of law is defective (by conflicting with a provision of the Constitution), any hearing on current dangerousness is a bootless exercise. . . .
>
> "Plaintiffs who assert a right to a hearing under the Due Process Clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme. Respondent cannot make that showing here." [Emphases in original.] *Id*. at ___.

The Supreme Court decided this case only on procedural, not substantive, due process grounds, stating that "[because] respondent "expressly disavow[ed] any reliance on the substantive component of the Fourteenth Amendment's protections, . . . we express no opinion on whether Connecticut's Megan's Law violates substantive due process. *Id*. at ___.